

- III. **It is more likely than not that, if he meets program requirements, Danilo would have qualified and will now qualify for permanent residency and a Green Card in the United States under the Immigrant Investor Program. He may also in the future qualify for a Green Card under a family-based program.**

EB-5 Visa

“The INA allots 9,940 immigrant visas each fiscal year for foreign nationals seeking to enter the United States under the EB-5 classification. See INA section 201(d), 8 U.S.C. 1151(d); INA section 203(b)(5), 8 U.S.C. 1153(b)(5). Not less than 3,000 of these visas must be reserved for foreign nationals investing in TEAs. See INA section 203(b)(5)(B), 8 U.S.C. 1153(b)(5)(B).”

<https://www.federalregister.gov/documents/2019/07/24/2019-15000/eb-5-immigrant-investor-program-modernization>.

Mr. Reiner describes the Immigrant Investor program as follows:

- **Immigrant Investors**

The final employment-based immigrant visa category is set aside for immigrant investors. To qualify for immigration as an immigrant investor is a highly complex and restrictive visa category. In order to qualify for immigration as an investor the individual must establish that they have invested or are actively in the process of investing capital in a new commercial enterprise, which will benefit the United States economy and create full time employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence , or other immigrants lawfully authorized to be employed in the United States.⁴⁷ The amount of capital that is required to be invested is \$1,000,000, except that amount can be reduced to \$500,000 if the investment is made in a targeted employment area. I have not seen any evidence that Danilo Bracho satisfies these requirements and whether he may in the future is speculative.

There are additional requirements for an individual who qualifies as an immigrant investor to be granted full permanent residence.

INA § 203(b)(5)(A)(i) & (ii); 8 U.S.C. § 153(b)(5)(A)(i) & (ii).
INA § 203(b)(5)(C)(i) & (ii); Targeted employment areas are defined as high unemployment areas or rural areas. A high unemployment area is an area which has experienced high unemployment of at least 150 percent of the national average. A rural area means any area other than an area within a metropolitan statistical area or within the outer boundary of any city or town having a population of 20,000 or more. INA § 203(b)(5) B&C. There is also a possibility of qualifying as an immigrant investor through indirect job creation by investing in a regional center. 8 C.F.R. § 204.6(J). For an individual investment not in a regional center there must be a comprehensive business plan. 8 C.F.R. § 204.6(J)(4)(i)(B). The source of the funds must be owned by the investor and the individual must establish that the funds were acquired directly or indirectly by lawful means. 8 C.F.R. § 204.6(e)(J). The assets to be invested must be totally at risk. 8 C.F.R. § 204.6(J)(2). It must be established that the 10 permanent jobs will be created within two years. 8 C.F.R. § 204.6(J)(4)(i)(b). The permanent residence that is granted in investor cases is a conditional permanent residence. Within 90 days prior to the 2nd anniversary the individual must apply for removal of conditional residence.

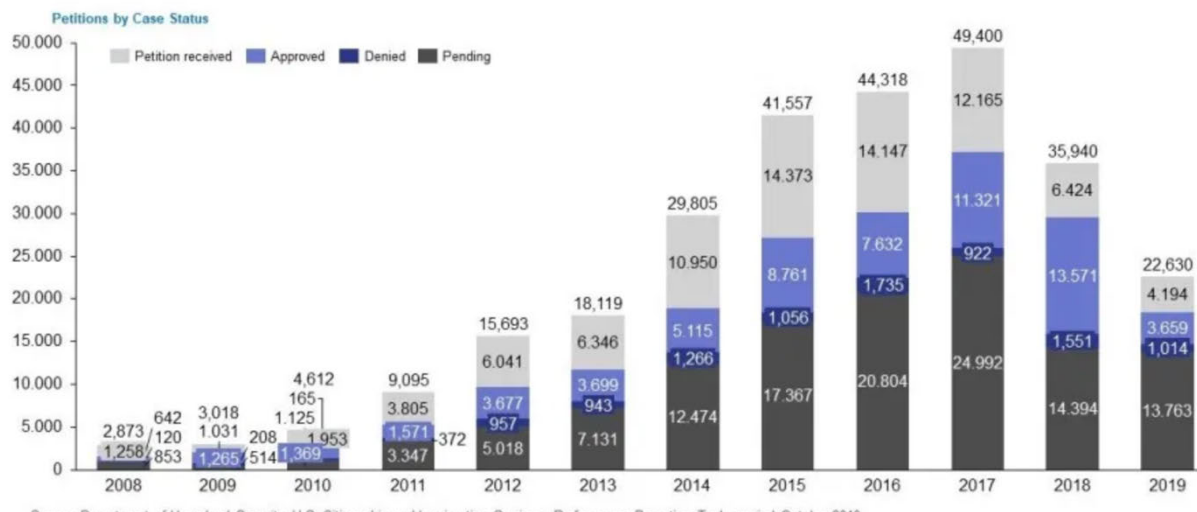
Under 8 C.F.R. § 216.6(c)(i)(iv) , the individual must establish the following in order for the conditional residence to be removed and for the individual to be granted full permanent residence: (a) The CR invested or was actively investing the required capital and it was sustained throughout the two year period of conditional residence; (b) The enterprise was sustained and the individual substantially met the capital investment requirements of the statute; (c) The individual created the IO full time jobs or it can be expected to create the IO full time jobs for qualifying employees within a reasonable time.

Reiner Report at 10-11.

Mr. Reiner's description of the program is out-of-date. In fact, the EB-5 Immigrant Investor Program has been modernized to increase the amount of capital required and to make other changes. See <https://www.uscis.gov/eb-5>. He also may be incorrect that "the source of the funds must be owned by investor." Reiner Report at 11 n. 48. In fact, that issue is on appeal to the D.C. Circuit. *Id.*

But I agree with Mr. Reiner's implied conclusion that if Danilo satisfies the requirements of this program, including any requirements concerning the source of the invested funds, then, more likely than not, he would be able to obtain full permanent residence. More applications are approved than denied.¹¹ Over a ten year span the annual cap of 10,000 EB 5 visas is seldom reached. Assuming Danilo' financial eligibility for an EB-5 visa (using funds already available to him and/or funds acquired as a result of a judgment in this case), it is more likely than not that he would receive this benefit.

I-526 Petitions Peak in 2017, Drop Dramatically



¹¹ While the following charts are provided as a visual aid and numerical summary, the official data for visa issuance is found at: <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2019AnnualReport/FY19AnnualReport-%20TableII.pdf> These reports are mandated by Congress.

	Period	Petition received	Approved	Denied	Pending
Fiscal Year Total	2008	1,258	642	120	853
	2009	1,031	1,265	208	514
	2010	1,953	1,369	165	1,125
	2011	3,805	1,571	372	3,347
	2012	6,041	3,677	957	5,018
	2013	6,346	3,699	943	7,131
	2014	10,950	5,115	1,266	12,474
	2015	14,373	8,761	1,056	17,367
	2016	14,147	7,632	1,735	20,804
	2017	12,165	11,321	922	24,992
	2018	6,424	13,571	1,551	14,394
Fiscal Year 2019 by Quarter	Q1 Oct – Dec	1,808	2,175	398	13,508
	Q2 Jan – Mar	580	795	180	13,105
	Q3 Apr - Jun	615	333	246	13,070
	Q4 Jul – Sep	1,191	356	190	13,763
	Total	4,194	3,659	1,014	13,763

Source: Department of Homeland Security, U.S. Citizenship and Immigration Services, Performance Reporting Tool, queried October 2019.

Family Based Permanent Resident

In my professional experience, many students and professionals in what would have been Danilo's position (had he not been injured in the bike accident and had been able to accomplish his desired field of studies) often meet and marry classmates and colleagues who are United States citizens and thereafter go on to obtain a Green Card through marriage.

Often students will meet and seek to marry United States Citizens in the course of their time studying or working. When this occurs, the foreign individual may adjust his status under 8 U.S.C. 1255 commonly referred to as section 245, which is a reference to the Immigration and Nationality Act (INA). The principal requirement is a bona fide marriage to a United States Citizen. By bona fide, USCIS seeks to determine whether the marriage was entered into solely to obtain an Immigration benefit. The process is relatively straight forward and includes the filing of a petition, commonly known as an I-130 petition. This is the petition of the United States Citizen spouse seeking to classify his or her foreign-born spouse as a United States Permanent Resident. What is central in such a classification (if the couple wants to be in the United States while the paper work is pending) is that the